UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTATE OF ERIC RIVERA, by and through successors in interest, PHILLIP MALIK and VALERIE RIVERA; PHILLIP MALIK, individually; VALERIE RIVERA, individually,

Plaintiffs,

vs. Case No. 2:17-CV-06939-CBM

CITY OF LOS ANGELES; LOS ANGELES POLICE DEPARTMENT; ARTURO URRUTIA; DANIEL RAMIREZ, and DOES 1 to 10,

Defendants.

DEPOSITION OF BRANDY ARZATE

Long Beach, California

Monday, December 10, 2018

Reported by: Gina Anne George
CSR No. 11260
LitiCourt Job No.: 201447

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Defendants.

DEPOSITION OF BRANDY ARZATE,

taken on behalf of the plaintiffs at 3777 Long Beach Boulevard, Third Floor, Long Beach, California, beginning at 10:15 a.m., and ending at 1:30 p.m. on Monday, December 10, 2018, before Gina Anne George, Certified Shorthand Reporter No. 11260.

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DANIEL RAMIREZ

ARTURO URRUTIA

BRADLEY HEARN

MARC STERNIN

JAMES TALMAGE

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All exhibits are bound with the confidnetial portion of the transcript

The information contained on pages 86 to 93, 98 to 108 and 114 to 140 has been designated as confidential and those pages are bound separately.

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LONG BEACH, CALIFORNIA;
MONDAY, DECEMBER 10, 2018; 10:15 A.M.

* * *

BRANDY ARZATE,
having been first duly placed under oath by the reporter, was examined and testified as follows:

EXAMINATION
BY MR. CASILLAS:

Q Ms. Arzate, good morning. My name is Arnaldo Casillas. I'm an attorney. I'm here to conduct a deposition. A deposition as you might know is a formal question and answer session, a lot like testifying in court. I've got a series of questions regarding some work you did in a shooting case.

Okay?

A Okay.

Q And the upshot of it is that I just want to review the work that you did, ask you some questions about that work, ask you some questions about the documents that you prepared and maybe show some of them to you, listen to some of them and we'll be done.

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A Sounds good.

Q In the last five years have you given a deposition?

A No, I have not.

Q Is this your first one?

A This is my second one.

Q Okay. The first one you gave, were you a party?

A Yes.

Q Okay. As you might remember, the court reporter here to my right and to your left is taking everything down word for word. After today's deposition she'll prepare transcript. We'll get it to the city attorney's office. They'll get it to you. We're going to ask you to read it. We're going to ask you to make any changes that you think are necessary and we'll ask you to sign it under the penalty of perjury again as being accurate.

Is that fair?

A Yes, it is.

Q And you agree to do that for us?

A Yes, I do.

Q Good. If you make a change and I should warn, a significant change, you know, I'm not talking petty things, the spelling is wrong, not that can court reporter would ever spell anything wrong, but you're certainly entitled to make those changes, but significant changes, a yes to a no, if that were to happen, I certainly will comment on it if this case ever got to trial, and if it did, that might prove embarrassing to you. You can change your testimony and that may also prove detrimental to the case against the City of Los Angeles and the other defendants.

Do you understand that?

A I do.

Q Hopefully my questions are all reasonably understandable. I might use a phrase, a term, or a word that either you don't understand or that I'm using incorrectly. Okay.

If that's the case, would you let me know?

A Absolutely.

Q If you answer any questions, I'm going to assume that you heard the question, I'm going to assume that you understood the question, and I'm going assume that the answer you give is the best answer you can give today.

Is that fair?

A Yes, it is.

Q Will you promise to tell me if I'm misusing a word or a phrase?

A Yes.

Q And do you promise to tell truth?

A Absolutely.

Q Good. Now, is there anything going on right now with you personally that may in any way limit your ability to give your best testimony today? And I don't mean to get into your personal life, but anything like maybe having worked a long shift last night. I don't know. Maybe you rolled out on a shooting last night and were up until 7:00 o'clock this morning, I wouldn't fault you for that, and that might -- you know, you might not be your freshest today.

Are you good?

A Yes, sir, I have no issues. I'm good to go.

Q Are you currently employed?

A Yes, I am.

Q And what do you do for a living?

A I'm a detective with the Los Angeles Police Department.

Q And how long have you been doing that?

A I've been a detective since 2006. I've been in my current assignment since 2012.

Q Is your current assignment FID?

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A Yes, which is force investigation division.
Q You've been with FID since?
A Since 2012.
Q And in those 12 years, without going into the names of the particular parties involved or any outcome in any of those investigations, since 2012 how many officer-involved shootings have you been a part of the team that investigated the incidents?
A Well, I've worked two different teams since I've been assigned to force investigation division. I was initially assigned to the --
MR. BRENTE: He just wants to know --
THE WITNESS: Too much information.
MR. BRENTE: Yes.
MR. CASILLAS: It's okay.
BY MR. CASILLAS:
Q I want you to talk all you can. All right.
A Any part in a case I would estimate -- and it's an estimate -- 30 -- 20 to 30.
Q And you yourself before going to FID -- and the term is detective, right?
A Correct.
Q And before you started with FID in 2006, what did you do before that?
MR. BRENTE: Hang on. That's not what she

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said.
BY MR. CASILLAS:
Q When did you go to FID, in 2012?
A Yes.
Q And before that in 2006 you were with the...
A I was promoted to the rank of detective.
Q Detective. Okay. And I'm assuming that sometime after high school you went to college.
A No.
Q Okay. And were you in the U.S. military?
A No.
Q When were you hired by the LAPD?
A I was hired in -- I started the academy in October of '97.
Q And I'm assuming you completed the academy successfully.
A Yes.
Q And you went out on patrol assignment somewhere.
A Yes.
Q How long were you out on patrol?
A Well, I worked at a patrol assignment until the end of 2000, I believe.
Q And what -- and by the way, since '97 until today, have you ever left employment with the LAPD?

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A No, I have not.
Q And you said in 2000 your assignment changed from patrol to something else.
A It did.
Q What was it?
A I worked a narcotic enforcement detail.
Q And how long did you do that?
A I was there for about a year and then went back out on patrol for another year.
Q And I was going to ask you to refresh my recollection a bit about the rank structured. You started off as a police officer and then I understand within the officer -- within the rank of police officer there are different grades or ranks.
A Yes.
Q What are those, if you know?
A Well, you start off as a recruit when you enter the academy, then you're a police officer I, which is a probationary officer, and then once you complete your probation, you're promoted to the rank of police officer II, and after that, there's a training officer, which is a police officer III, and then it branches off to either those who want to go to the detective route or the sergeant route.
Q Did you ever test for sergeant?

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A I did.
Q How many times?
A I tested once for sergeant. I was promoted to the rank of sergeant, but I deferred it.
Q What do you mean by deferred?
A I -- when I was promoted to the rank of sergeant, I was in a detective supervisory position and I chose to remain as a detective in lieu of promoting to sergeant.
Q And so in 2006 you formally were designated the rank of detective?
A Correct.
Q And what was your first assignment as detective?
A First assignment I worked the southwest patrol division.
Q Just general crime investigation?
A Yes, I was assigned to major assault crimes.
Q By the way, from '97 until 2006, during any of the different assignments you had during that period, did you ever discharge your firearm outside of training while on duty?
A No.
MR. BRENTE: She answered.
But go ahead.

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THE WITNESS: I apologize. No, sir.
BY MR. CASILLAS:
Q There at southwest patrol, you said it was major crimes.
A Major assault crimes.
Q And how long did that assignment continue?
A I believe I was there for approximately a year, and I'm guesstimating.
Q What was your following assignment?
A I worked burglary for a short period of time. It was only a few months and then I was recruited to the gang detectives.
Q And in gang detectives, generally speaking, what were your duties and assignments?
A Investigating gang crimes.
Q How long did that assignment continue?
A I was there for a couple of years.
Q So approximately 2008-ish?
A Yeah, to probably either the end of 2008 or the beginning of 2009.
Q And after working with gang detectives, were you reassigned to another unit?
A I was actually promoted to southwest division to the rank of detective II, which is detective supervisor.

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Q Congratulations.
A Thank you.
Q Are you currently detective II?
A I am.
Q And with that promotion, did they move you to a new post or new assignment physically? In other words, did you leave the gang detective detail or unit and go off someplace else?
A Well, the title was different. It was CLEAR and for the life of me I couldn't tell you what CLEAR stands for right at this moment, but I was a CLEAR detail where my focus was a specific gang, which was the Black P/Stones in southwest division.
MR. BRENTE: Just so we're clear, CLEAR is an acronym, all caps, C-L-E-A-R.
BY MR. CASILLAS:
Q And you were assigned to a particular group that you policed, for lack of a better word?
A A particular group and then the area was the southwest division.
Q And how long did that assignment continue?
A I worked there for approximately six to seven months, and then I applied for a job to go back to narcotics.
Q Did you get it?

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A I did.
Q And when did that move take place?
A That move was in either the end of 2009 or beginning of 2010. I don't remember specifically.
Q How long did that assignment continue, narcotics?
A I stayed there for a year and a half or so.
Q What assignment followed?
A Went back to gang detectives.
Q And how long were you there?
A I was at gang detectives approximately a year before coming to force investigation division.
Q Was there something about FID that drew you to it or was it an available spot that they identified you for it and said, you know, you would be good for us here in FID and you got an invitation to join them?
A I was contacted and advised there was a position. They recommended I put in for the position, and after doing some research, I did.
Q And I think you said since then you've investigated approximately -- was it 36 or so --
MR. BRENTE: She said 20 to 30.
BY MR. CASILLAS:
Q He's going to keep me honest.

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A That's approximate.
Q I get that, beyond. And you should know during some of the questions today I'm going to ask you to give us your best estimate, you know. We don't go around, you know, in life counting everything, measuring everything and --
A Of course.
Q -- kind of watching how much time elapses in certain events.
A You mentioned investigated. In a lot of those incidents I was not the lead investigator, but I did participate in.
Q And I get that. I'm assuming when you started off, they didn't -- you know, you didn't show up and there was a big file there and you were asked to lead that, right?
A Correct.
Q Anyway, we certainly don't want you to guess, and if you can't answer with some information with confidence, let me know.
Okay?
A Okay.
Q Now, in FID, the force investigation, division you started there in about 2012. Yes?
A Yes.

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Q When you started, what were your duties generally?
A I was assigned to the criminal apprehension team.
Q And what does -- what are the duties of the criminal apprehension team?
A They respond to the crime scenes, and if there are suspects, they complete the arrest report and they handle the criminal prosecution.
Q Did you ever work homicide?
A I never worked homicide.
Q Did you ever investigate any cases where there was a death? And this is before coming to FID.
A No, sir.
MR. CASILLAS: I can't seem to do two things at once.
Do you mind if we go off the record for a quick second?
MR. BRENTE: I don't mind at all.
(Discussion held off the record.)
MR. CASILLAS: Back on the record.
BY MR. CASILLAS:
Q The criminal -- you mentioned that when you started in 2012 with FID you started in the criminal -- with the criminal apprehension team?

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A Yes, sir.
Q How long was that assignment?
A I was with the criminal apprehension team until the beginning of 2015, so roughly three years.
Q And after that assignment, did you move on to a different one within the FID or did you leave FID?
A I moved to a different team within FID.
Q And what team is that?
A It's an administrative team and it's the team I'm currently assigned to.
Q What is the name of that team?
A It's just considered an admin portion of FID.
Q And what are the duties and responsibilities of the admin team?
A We actually respond to categorical use of force incidents and we investigate them.
Q And when was it in 2015 that you went to the admin team?
A It was in the beginning of 2015. If I had to guess, I believe it was just before Easter.
Q Sometime in the spring?
A Sometime in the spring.
Q It reminds me of a funny story that I'll tell to you guys after --

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A Okay.
Q -- we're off the record.
So is it that from some time in the spring of 2015 until today, you've done 20 to 30 officer-involved -- or you've participated in 20 to 30 officer-involved shooting investigations?
A No, I was including the entirety of time with force investigation division.
Q And as part of your work for the criminal apprehension team, did you do any officer-involved shooting investigation or did you participate in any officer-involved shooting investigations?
A Yes.
Q How many, best estimate?
A I'm being very conservative, but probably 10 to 20.
Q When did you become for the first time a lead investigator for FID, the admin team, investigating an officer-involved shooting?
A I handled an officer-involved shooting towards the end of 2015. I just can't recall the specifics.
Q Categorical -- is it categorical?
A Categorical.

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Q Categorical use of force includes the use of firearms?
A Correct.
MR. BRENTE: Well -- well, I think that's overly broad. I don't think every use of a firearm constitutes a categorical use of force.
BY MR. CASILLAS:
Q Does that include officer-involved shootings where an officer discharges his firearm at a suspect?
A Yes, that's one example.
Q And accidental firearm discharges, is that included in categorical uses of force?
A We investigate those as well, yes.
Q And categorical uses of force include both fatal and nonfatal shootings?
A Correct.
Q Now, in addition to officer-involved shootings, fatal and nonfatal, intentional and accidental, what other categories of force do you investigate in that category of investigations of categorical uses of force?
A We also investigate in-custody deaths. We investigate law enforcement-related injuries that meets serious bodily injury requirements, canine bites with hospitalization.

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Q Anything else?
A All intentional head strikes. I believe that covers it. We also respond to dog shootings.
Q How about auto, the use of a patrol car or police auto in a use-of-force incident?
MR. BRENTE: I'm sorry. I didn't hear the question.
BY MR. CASILLAS:
Q Sure. The question was whether or not she also investigated the use of force involving autos.
MR. BRENTE: I'll just object as vague and ambiguous.
But you can answer if you understand.
THE WITNESS: I think that would depend on the use of the auto.
BY MR. CASILLAS:
Q Intentional or not, right?
MR. BRENTE: Well, I think that's vague and ambiguous.
But you can answer if you understand.
THE WITNESS: It just depends the way the officer intended to use the police vehicle, if you're talking about a police officer's vehicle being involved.
BY MR. CASILLAS:

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Q Is there within the LAPD admin unit of FID that is responsible for the investigation of criminal activity involving force by a police officer?
MR. BRENTE: I'm just going to object as vague and ambiguous, I think for her, unintelligible.
But you can answer if you understand.
THE WITNESS: I'm not real sure about the question.
BY MR. CASILLAS:
Q Let me put it this way. In a use-of-force incident that's investigated by FID, the administrative unit, after the investigation is complete, I understand you prepare a report.
A Yes.
Q And that report is submitted to who after you finish it?
A There's several levels of review.
Q Okay. And what are those levels?
A Well, the first level would be to my direct supervisor, which is usually detective III. He will review it. If there's any modifications or corrections, I will make those adjustments and then once he is confident the investigation is thorough and complete, it goes to a lieutenant II.
MR. BRENTE: That's like a Roman numeral II.

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THE WITNESS: Yes. For his or her review.
BY MR. CASILLAS:
Q And after he or she signs off, where does the report go?
A When he or she signs off, it goes to our -- now we have a captain, but at the time of this it went to our commander for the review.
Q And after he or she reviews it, where does it go?
A Once he's convinced it's thorough and complete, it gets distributed and copies get sent out to the use-of-force review division. They get sent out to the inspector general's office as well.
Q I understand a copy goes to the district attorney's office.
A And a copy -- that's later.
Q Okay. Tell me the process by which your report -- one of your reports gets to the district attorney's office to the extent you know?
A After the commander signs off and it gets distributed, then we prepare a copy for the district attorney's office, but we do make some changes from our original report because, of course, we have to take out compelled statements.
Q Now, at the use-of-force review, is there --

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I guess by virtue of the title there is a body that evaluates whether the shooting is within policy or not?
A Correct.
Q And is that the use-of-force review board?
A Correct.
Q And are you familiar with the process that's undertaken at the use-of-force review board to evaluate whether a shooting is within policy or not?
A No, I'm not sure what their process is.
Q Have you ever given testimony or made presentations before the use-of-force review board?
MR. BRENTE: I'm going to object as compound. It assumes any presentation before the use-of-force review board is sworn testimony.
MR. CASILLAS: That's true.
BY MR. CASILLAS:
Q Have you ever given any testimony before a board like the use-of-force review board?
MR. BRENTE: That's sworn testimony under oath.
THE WITNESS: No.
BY MR. CASILLAS:
Q How about any -- made any presentation?
A Yes.

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Q Okay. And what's the -- and is that something that happens during all of the -- as part of rather -- strike that. That's a horrible way to start a question.

What is the nature -- and do you make a presentation when you present a case to the use-of-force review board?

A Yes.

Q And what's the nature of the presentation that you make?

A A presentation is to familiarize the parties at the board as to what happened to kind of give them a thorough -- a clear understanding of the events.

Q So I'm assuming -- and the board typically consists of three people.

A Oh, there's a lot more than three people at the board.

Q How many typically?

A Including everybody in attendance?

MR. BRENTE: I think he's asking about the people that are on the board as opposed to everybody that's in the room.

MR. CASILLAS: Correct.

THE WITNESS: Oh, gosh. I believe there's six, but I'm not 100 percent sure.

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BY MR. CASILLAS:

Q And you say the purpose of presentation is it to familiarize the board members with the facts of the case you investigated. Yes?

A Correct.

Q And do you do that verbally? Do you do that in writing? Is there a PowerPoint presentation? How does it work?

A We prepare a PowerPoint presentation, and then we actually go up and go through the PowerPoint presentation and answer any questions if they have them.

Q And since the time that you've been with FID, the admin team, I guess since 2015, how many presentations have you made?

MR. BRENTE: To the use-of-force review board?

MR. CASILLAS: Yes.

THE WITNESS: Again, this is going to be a guess. Give me a second. It's going to take me a second to try to calculate it. I've probably done approximately ten, give or take.

BY MR. CASILLAS:

Q As part of the presentation, do you make a position or do you take a position with respect to any possible outcome?

A No.

Q And have you ever made a presentation where the gist of the presentation or at least your own personal evaluation of the particular case led you to believe that the shooting was out of policy?

MR. BRENTE: Okay. So I just want you to reask that because she's not going to give any personal opinions, but I don't know if that's your question. So before I instruct her not to answer, I want to make sure I'm understanding your question.

So she testified that she, as part of FID, they do not make any recommendations to the board.

So now you have another question and I'm trying to find out what that is.

BY MR. CASILLAS:

Q My question is real direct.

Did you ever come to a presentation and think, my God, this shooting, out of policy, I can't believe this guy shot this suspect?

MR. BRENTE: So I'm going to object --

BY MR. CASILLAS:

Q First of all, did you ever have a sense of -- that sort of feeling or opinion regarding a shooting?

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MR. BRENTE: So I'm going to object it's not relevant, it's not likely to lead to the discovery of relevant or admissible evidence. She is here in her capacity as a detective supervisor for the Los Angeles Police Department assigned to the force investigation division. She is not here either as an expert, as a retained expert and she is not here in her personal capacity to express any personal views or opinions about any investigation she has participated, so I'm going to instruct her not to answer that question.

MR. CASILLAS: In your recitation of all your objections, Cory, I didn't hear you cite any privilege.

Is there a privilege that you're asserting?

MR. BRENTE: My grounds are what they are.

MR. CASILLAS: Okay.

MR. BRENTE: I don't think a deposition is intended to be a fishing expedition and I don't think it's a place to ask questions for which there's no basis, so if -- well, I've made my record about --

MR. CASILLAS: I get that.

MR. BRENTE: -- why she's here.

MR. CASILLAS: I get that. She's a supervisor if there's a Monell of cause of action.

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One of the claims in the Monell cause of action is that there is an underlining custom and practice of doing investigations that, for lack of a better word -- and I'm not suggesting she does that -- that whitewashes them or that the powers that be within the LAPD look the other way and turn a blind eye to excessive uses of force or shootings that are outside of policy.

We have an individual here who's presented at least 10 of these cases, maybe 20 to the panels. Okay. It is absolutely relevant whether or not she believes a policy or a shooting is out of policy. Okay. If she goes in and she believes that -- the kind of hands-on investigator that has that intimate contact with the facts of the case and it comes back as not in policy, okay, that evidence falls squarely within what we're asserting in the Monell claim.

For that reason, I respectfully submit it is 100 percent relevant; moreover, you're not asserting privilege. Okay. And that's it. And, you know, without belaboring the point, if I respectfully ask that you reconsider.

MR. BRENTE: Sure. And I respectfully disagree because if she had testified here that as part of her presentation to the use-of-force review

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board part of her duties and responsibilities were to offer her professional opinion about whether or not a use of force was within policy or outside policy, then I agree with you that it might be relevant for you to know because you might have a concern that she was presenting something to the board and offering an opinion, let's say, hypothetically for your prospective that it was an out-of-policy use of force and the board then came to a different conclusion, I might see some relevance, but as she's made clear here today in her sworn testimony, she offers no opinions. It's essentially the dragnet version of just the facts, man, and so her personal opinion or thought since that -- the testimony is that does not come in at any review for the LAPD, can't be relevant, so my instruction remains.

MR. CASILLAS: At some point it seems like you're just basing it on your conclusion of what's relevant or not.

MR. BRENTE: Well, I think relevance is an issue in the sense that I think depositions are broader than what's admissible at trial, but I don't think they should be asking things that are not relevant or likely to discover -- or likely to lead to the discovery of relevant or admissible evidence.

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Her personal view about the appropriateness of use of force is not relevant in any proceeding particularly because, as I've said, she doesn't offer that in her capacity of FID.

As I said, if she did, that is part of her presentation was to offer her opinion, I think it would be relevant for you to know whether or not her opinion was followed and the reasons it was or wasn't followed, but she does not express an opinion, as no one at FID expresses opinions. They just gather facts, present facts, and there are others who make decisions about the appropriateness of use of force; so her personal opinions are not relevant and she does not speak for the LAPD on that.

As to your Monell claim, she's not here as a member of the command staff speaking for the department on that, so it's --

MR. CASILLAS: Again, respectfully, I'm not sure you don't know the reason we have her here --

MR. BRENTE: You said --

MR. CASILLAS: -- as clairvoyant as you might be.

MR. BRENTE: I'll go by what you said. I can't recall if we were on the record or not -- I don't remember -- but I think you kind of outlined to

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the detective what your purpose here today was and that was to kind of go through the investigation, if I'm recalling your words exactly, to lay foundation and establish that some of the documents are documents that she authored, something to that effect, so that's what I recall. Either way my -- my instruction stands.

BY MR. CASILLAS:

Q Ms. Arzate --

MR. BRENTE: Detective, please.

BY MR. CASILLAS:

Q Detective. You're familiar with the use-of-force policies at the LAPD?

A Correct.

Q Obviously it was something that was of significant importance to you when you went through the academy, right?

A Correct.

Q And then although you yourself haven't been involved in an officer-involved shooting incident, you've reviewed them when you went through your probationary period there with the field training officer, again, use of force was something that was focused on during that period, right?

MR. BRENTE: Do you mean reviewed policies?

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MR. CASILLAS: Yes.
THE WITNESS: Correct.
BY MR. CASILLAS:
Q And I'm sure that once you started doing officer-involved shootings, the backdrop was the policies, right?
MR. BRENTE: I'll object as vague and overly broad.
BY MR. CASILLAS:
Q The use-of-force policies.
A Correct.
MR. BRENTE: Same objection.
But you can answer.
THE WITNESS: Yes.
BY MR. CASILLAS:
Q And, you know, you knew that the board was going to make the conclusions as to whether or not the shooting was within policy and that it was reasonable under the circumstances, correct?
A Correct.
Q And as you went through your role as an investigator, you sought to find facts that related to that question, whether or not the shooting was reasonable. Yes?
A I think so.

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Q Yeah. No. No. I mean, you're not out there just kind of -- I mean, when you talk to witnesses, your questions relate to the shooting itself and those facts that drive the shooting, for example, right?
A I'm sorry.
MR. BRENTE: I'll just object as vague and overly broad.
THE WITNESS: Yeah.
BY MR. CASILLAS:
Q Again, the use-of-force policies as you understand them requires a police officer to use deadly force in the form of a firearm discharge only if the circumstances that he or she are encountering reasonably raise a fear of death or serious bodily injury, correct?
A Yes.
Q And so when you conduct your investigation, you look for those facts that relate to whether or not a stated fear of serious bodily injury or death are supported or not supported by facts, correct?
A Correct.
Q In any of the investigations that you've done, have you yourself concluded that the facts do not support reasonable use of force?

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MR. BRENTE: For the same reasons -- and I don't want to unnecessarily take up your time or the reporter's time -- for the same reason that we stated in the colloquy that you and I had about the same or similar question you asked her before about her personal opinion about the appropriateness of any use of force by a Los Angeles police officer in her capacity as an investigator for the force investigation division, I'm going to instruct her not to answer.
BY MR. CASILLAS:
Q In this case, the shooting of Eric Rivera, did you find any facts that supported a reasonable use of force?
MR. BRENTE: I'm going to -- I'm going to object because I don't think that's what she does. She investigates and all the facts are put in this thing that's -- and the record won't reflect this -- this is a binder in front of her that's bigger than the Manhattan phonebook, so there's lots of things in there.
MR. CASILLAS: Do they even have phonebooks anymore?
MR. BRENTE: I think they might. Sometimes they leave them on my porch. I don't live in

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Manhattan, but sometimes I get these cheesy yellow pages that people leave on the porch that end up in the recycler, so I think they're still out there, but...
MR. CASILLAS: Anyway -- and I appreciate your objection.
BY MR. CASILLAS:
Q My question is this: Did you find any facts that supported in your own mind a conclusion that the shooting was reasonable?
MR. BRENTE: I'm not going to let her answer, and the reason I'm not because then you're going to want to ask the opposite question, did you find anything that don't support it's reasonable; and that's not why she's here. She's not going to answer those questions. She's not here for that.
MR. CASILLAS: What's she here for?
MR. BRENTE: She's here to -- well...
MR. CASILLAS: You don't know what she's here for. Look, Cory, real simply -- and I'll just end the deposition. I get it and I'm not posturing. The upshot of it is, she is an eyewitness to very significant -- to the collection of facts in this case, and in her role as she has admitted, she has a backdrop the use-of-force policies. Okay. And as

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she's doing her work, she's looking for things that relate to the use of force and whether or not it was within policy just by virtue of the facts she's collecting. Okay.

And my question is, as she's doing it, did you find anything that you didn't. Because, again, if she saw something, heard something, observed something, concluded something that suggested the use of force was not proper, I'm entitled to know --

MR. BRENTE: Okay. So I --

MR. CASILLAS: -- because it impeaches the parties in this case.

MR. BRENTE: I disagree. So as you know -- and you're asking her a series of questions, but you've handled other officer-involved shootings involving Los Angeles Police Department, so I know all agencies have different procedures and protocols, but you've handled others involving the Los Angeles Police Department, you know, yourself and from her answers here today there is a use-of-force review board that participates in the adjudication of an officer use of deadly force.

Now, if you want to -- and I'm not encouraging this, but if you were taking the deposition of a decisionmaker -- or I'll rephrase

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that to an ajudicator, someone who participated in the adjudication of this use of deadly force, I think those would be fair questions. What information did you consider in adjudicating this use of force and did you consider this or did you consider that, I think that would be fair.

I don't think it's appropriate to ask her that question because she played no role in the adjudication. She was --

MR. CASILLAS: I don't --

MR. BRENTE: -- was a fact-gatherer.

MR. CASILLAS: I don't care about adjudication.

MR. BRENTE: But I do.

MR. CASILLAS: And I appreciate that. But her job as an investigator and whether or not it was done in a way that a jury might consider credible is at issue. It is. She's going to get on the stand and I'm going to ask her questions and I'm going to point out things that she missed, okay, and whether or not she noticed that or knew that fact or that circumstance is relevant to her credibility.

MR. BRENTE: Okay. And I don't necessarily disagree with that, so if you have pieces of information that you believe are relevant to the

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appropriateness of the use of force in this case and given that you have a copy of the force investigation division report, I certainly don't have a problem and wouldn't object to you presenting those facts or fact to her and ask her whether or not they are in her report and if there aren't, why they are or aren't, so -- why they are or are not.

That's a different question than asking her to provide an opinion as to whether there were things that were suggested that a use of force was reasonable or unreasonable because she doesn't make those decisions.

Things that you believe that you've uncovered maybe in your investigation or maybe you've hired someone to assist you as an investigator that you believe are relevant to this case as it relates to the adjudication of it that from your perspective are not contained in the report, I don't have a -- I don't think there's anything wrong with you asking her about those.

Were you aware that -- this is hypothetical in my mind. Were you aware there was a witness across the street, Mr. Smith, yes or no. Do you know Mr. Smith said, you know, the sun was out. I don't know.

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MR. CASILLAS: You found Mr. Smith?

MR. BRENTE: Those I don't -- I don't object to, but asking her to offer an opinion as to things that were suggested that the use of force was reasonable or unreasonable, that's where I draw the line.

But certainly, like I said, I have no problem with you -- I'll use the word confronting -- very gentlemanly with information that you believe you have that you think is relevant to the investigation, but according to your review wasn't included in the investigation. I think those are fair questions and I certainly would allow her to answer that.

MR. CASILLAS: Ms. Arzate, we've going on for about an hour. With your okay, can we take about a five-minute break just to kind of maybe get some water and go to the men's room actually?

THE WITNESS: Of course.

MR. CASILLAS: We'll go off the record.

MR. BRENTE: Thank you.

(Recess taken.)

MR. CASILLAS: Back on the record.

BY MR. CASILLAS:

Q The investigation that you conduct into an

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officer-involved shooting where there is a death, is that investigation tantamount to a homicide investigation that the homicide division would conduct in a shooting death?

MR. BRENTE: I'll just object as vague and ambiguous.

You can answer if you understand.

THE WITNESS: We handle the entire investigation.

BY MR. CASILLAS:

Q And before coming to FID, I understand you had not investigated a homicide, correct?

A That's correct.

Q When you came to FID, did FID undertake any sort of training with respect to officer-involved shootings?

A I was required to go to a homicide school before I could handle one of these cases.

Q And is homicide school a week school or how long was it?

A I can't remember if it was one week or two weeks.

Q And how long after you came to FID did you undertake your first investigation of an officer-involved shooting homicide where you were the

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lead detective?

A That would have been when I worked the admin section and that would have been when -- I mentioned earlier it was toward the end of 2015 and I can't recall the exact month.

I apologize. That wasn't a homicide. It will take me a minute to think about it.

Q If it comes to you, just let me know.

A Okay.

MR. BRENTE: Well, hang on. Let her correct the record. I don't want you to move on to something and she'll forget.

THE WITNESS: The one in 2015 the individual survived. I'm not sure right now, sir. I'll have to think about it.

BY MR. CASILLAS:

Q Is there a particular protocol or a set of rules, some kind of procedures that you rely on in investigating an officer-involved shooting that results in a death?

A I'm sorry. I don't under the question.

Q Sure. I guess is there a typical way that you do the investigation? You're at home. You get a callout. You're on the board, whatever. You're the assigned officer, lead investigator. You roll out.

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You go out to the command post. You get a review. You evaluate the actual shooting location. You talk to deputies. You do -- or excuse me -- the officers. You do a walkthrough. You investigate with witnesses and so on and so forth.

MR. BRENTE: I'm going to object as compound. Plus you used the word on the board, and I think I know what you mean, but someone reviewing this transcript later might interpret it as something else.

BY MR. CASILLAS:

Q I was giving you an example. I'm not saying that was the way you did things. I want to know if there is either formal protocol, in other words, a specific defined set of steps that you follow in an officer-involved shooting that results in a death or whether you yourself have your own custom and practice that you follow in undertaking that investigation.

So first of all, is there a protocol?

A I mean, you learn while on the job. You learn from senior investigators when you begin working in the division.

Q And I'm assuming that as a result of that instruction, as a result of homicide school, and as a

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result of just kind repetition, eventually the LAPD found it appropriate to assign you the role of a lead investigator and you've done now several of these investigations.

Is there -- do you have your own kind of custom or practice that you follow in an officer-involved shooting?

A No.

MR. BRENTE: I'll object as vague and ambiguous.

But you can answer.

THE WITNESS: There's pretty much a -- the division as a whole tries to operate in the same manner.

BY MR. CASILLAS:

Q Good.

A And there is a team of investigators that works on every case. It's not just myself. We have a team of usually eight to ten investigators that roll to callouts.

Q And typically how is it that you're assigned a role in a callout, if you know?

A We have a rotation.

Q And what's a rotation consist of?

A If there's four investigators assigned to a

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team, you will handle -- you go in order. You handle the first case and then it goes on to the next investigator, so essentially you handle every four cases assigned to your specific team.

Q And on a team, obviously in that rotation, every fourth case you are designated as the lead investigator?

A Yes, sir.

Q And what is the role of the lead investigator in an officer-involved shooting?

A The lead investigator would interview the involved officers. You would conduct -- prior to the interview, you conduct the walkthrough with the involved officers and you author the report.

Q Now, the preparation of the report, is that something that is done independent of the other team members or is it a collaborative effort?

A The investigating officer completes the report, but it's written based on the efforts of your other team members and jobs that they did.

Q And I have what I believe to be the OIS investigation or the FID investigation and it consists of about, oh, 650 -- 625 pages of documents and it includes transcripts and it includes the coroner's report and it includes all sort of other

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things, but within itself there is --

MR. BRENTE: Now, is this a different question?

MR. CASILLAS: No, same question.

There is what I'm calling the report. I'm going to identify this as Exhibit No. 1, and we're going to ask the court reporter to mark that for us.

(Plaintiffs' Exhibit 1 was marked.)

MR. BRENTE: So Exhibit 1 is going to have to be under seal. They'll be other things in this case under seal because Exhibit 1 was provided to counsel subject to a protective order, so it has to be treated with the same solemnity here at the deposition, as do the questions to Detective Arzate about this specific investigation as the protective order requires.

So far the questions in the deposition have been general and I haven't mentioned anything about it. Now that you want to attach the portion of the force investigation division report related to this case, which as you know is watermarked and pursuant to the protective order, that has to be attached under seal.

MR. CASILLAS: I respectfully disagree. I mean, for example, if I showed her a photograph that

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is subject to our protective order and ask questions about the photograph, I would certainly object to that testimony with respect to a photograph of something that was open and obvious out in the field is confidential.

Are you taking that position?

MR. BRENTE: I'm not quibbling because I didn't -- I actually didn't follow exactly what you said.

The materials that we provided pursuant to a protective order -- and I can see across the table the force investigation or at least part of it. I don't know if that's all of it or not -- has the watermark on materials that we produced subject to a protective order.

So things that you got pursuant to the protective order are covered by that order and they have to be treated here with the same solemnity as they would in any other fashion, so if you want to attach them as an exhibit, I'm not objecting to it. They just have to be under seal; otherwise, theoretically, if they weren't attached under seal, you could drive over to the L.A. Times and give them a copy of the transcript.

MR. CASILLAS: I'd never do that.

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MR. BRENTE: Well, okay. But with all due respect, I don't make decisions that way. Whether it's you or someone else, I'm not -- I'm not casting any aspersions, but it's subject to a protective order, so if you want to attach it as an exhibit, I'm not objecting to it. It has to be under seal because it's pursuant to protective order, and when you get into questions -- you decide how you want to do your examination. It's not my place, but any questions about the investigation itself has to be under seal because you're asking her as the assigned investigator about the investigation that itself is under seal, so --

MR. CASILLAS: But that's where we differ.

And just so the record is straight, I'm not quibbling about the exhibits. They are confidential, protected by the protective order and subject to those protections.

On the other hand, what she did as an investigator out in the field independent of any of the documents is not protected.

MR. BRENTE: Well, I respectfully disagree for this reason, so everything that she did resulted in the report -- the force investigation division report, so because the report is privileged, the work

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she did on the investigation is similarly privileged. So, for example, the testimony she gave so far, theoretically if you wanted to forward that to L.A. Times, you can clearly do it. It wasn't under seal and there's no privileged attached to it as it relates to confidentiality.

When you want to ask her about the underlying investigation because that is privileged, those questions have to be under seal. That's -- otherwise, there would be no purpose in having a protective order if the document was under seal, but all of these questions about the document were not under seal, one, that would be inconsistent; two, that would lend itself to an argument by yourself or another lawyer that I waived the privilege by allowing the witness to answer questions about the investigation without requiring them being under seal and insisting that the documents be under seal, someone could make the argument that you, Mr. Brente, waived any confidentiality by allowing the witness to answer questions about the investigation without requiring them to be under seal and that's not my intention. I can't be put in that position.

And I'll just end with this. I don't know how that negatively impacts plaintiffs to have

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questions to the detective about this investigation under seal. I don't know how that negatively impacts the plaintiffs to give you the --

MR. CASILLAS: Have you ever opposed an MSJ in ten days and had to struggle to get documents under seal released from the protection?

MR. BRENTE: Sure. And that's --

MR. CASILLAS: It's impossible.

MR. BRENTE: But that's -- but that's part of the process. I mean, I can't control timelines, deadlines. I can't be accountable for those in the sense of, well, this should be under seal but because I want to do something in short order and I don't have the time to get clearance from the court to file them under seal, therefore, I'm not going to ask these under seal I don't think is the correct analysis.

So I think questions to her about the investigation need to be under seal, and I'm going to require that. And as I said, all of the questions so far I haven't said anything about any of that because all of your questions so far have clearly been procedural about her experience and the policies -- or the procedures of the force investigation division, but when you want to get into the

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investigation itself --

MR. CASILLAS: Okay. I'm not going to discuss the documents that she -- that were produced with respect to the investigation, period.

MR. BRENTE: Okay. But when you're asking her about what she did in the investigation, that -- it's confidential investigation. It says on the first page of -- besides the fact it's under a protective order -- the first page of the force investigation report says it is a confidential report for the chief of police.

She was the lead investigator, so questions about the investigation and what she did have to be under seal.

MR. CASILLAS: I strongly disagree, Cory, and the example I'll give you is this. I have a series of photographs, for example. I may show her one, and I may say, you know, Ms. Arzate, you know, were you present when this photograph was taken. Yes. You know, it displays a shoe. Did you understand that to be a shoe? Yes.

Do you see what I'm saying? I mean, how is that protected? And without referring to any document, without showing her a document, what she did as part of that investigation has not been deemed

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confidential, and if you are telling me that there's some other order out there that says that all of testimony of any of the people that were present that day is confidential, it would shock me.

MR. BRENTE: No. And if you want to do it on a question-by-question basis, I mean, I'm fine doing that. I think it's going slow things down because I'm going to then have to jump in and tell her she can't answer that unless it's under seal, so we can do it question-by-question.

Just to take your example, if you show her a photograph of a shoe and asked her if she saw that shoe, I would not require that to be under seal. I'll just tell that you right now. I'm assuming you're going to ask her about the investigation. I think it's cleaner if that's under seal, but if you want to do it question-by-question, I'll do it that way, but I'm pretty good listener I think and I think it's going to be jumpy because we're going to end with the transcript and there's going to be -- you know, it's going to jump from page to page to page under seal, not under seal, under seal, not under seal, and I think it's going to be really choppy and unreadable, but I'll leave it to your discretion.

MR. CASILLAS: Thank you.

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BY MR. CASILLAS:
Q As lead investigator, your duties include the interview of the involved officers, the participation in the walkthrough, and the authoring of a report, correct?
A Yes, sir.
Q And I imagine eventually when it gets to the review board, you are the officer that presents the file to the review board?
A I present the PowerPoint presentation to the use-of-force review board.
Q And when you prepare that PowerPoint presentation, do you yourself prepare that?
A I do.
Q And what is the nature of that PowerPoint presentation?
MR. BRENTE: I'll just object as vague and ambiguous.
But you can answer if you understand.
THE WITNESS: Yeah, if you can get a little more into detail.
BY MR. CASILLAS:
Q What's typically in the PowerPoint presentation when you present a file to the review board of a case involving an officer-involved

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shooting with a death?
A What is the content of the PowerPoint presentation?
Q Yes. Yes.
A The first line is usually a very brief summary of the event. You'll have a slide that show a lot of times has an aerial view of the location just to give some perspective, as well as the nearest cross-streets and so forth. They'll be slides which identify the involved officers. They'll be a slide which identifies the subject in the case. You'll have -- occasionally they will be a slide showing the officers' positions at the time of the OIS, as well as the direction of travel.
If he had a body worn video or digital in-car video, that will also be included in the presentation. If the subject involved is deceased, there will be oftentimes, I guess, a diagram from the autopsy showing the location of wounds. Sometimes you do use movement in the PowerPoint presentations to show -- you know, they'll use a police car to show the direction the officers were travelling. I believe I included a slide of that.
And at the end it just kind of summarizes the officers involved and if their pistols were

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within department specifications.
Q And this particular case there was an issue involving the patrol car that the involved officers were using that night that it either wasn't put in park or wasn't somehow safely stopped before the shooting.
Was that -- are those sort of things -- let me ask it this way.
Other than the shooting itself, does your presentation to the board include other factors that may impact or may have impacted on the shooting?
MR. BRENTE: He's asking just generally about general presentations to the use-of-force review board.
THE WITNESS: Do we present other issues other than the officer-involved shooting?
BY MR. CASILLAS:
Q Yes.
A Yes.
Q Do you ever prepare animations?
A Yes.
Q And --
A Let me clarify something. We have a team that actually helps us. I'm not actually that good at computers myself, but there is a team that is, and

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they assist me with the preparation of the PowerPoint. I tell them what I want. They make it happen. We make adjustments, so I'll have a finished product that I'm happy with by the time they're done with it.
Q To the extent that an officer who has been involved in an officer-involved shooting is the subject of your investigation, is your investigation also utilized by the department in considering discipline against him or her?
A Yes.
Q And is that the primary function of the work that you do, in other words, to offer up a complete investigation covering all of the facts of a shooting so that the shooter and review board can determine whether or not the shooting is within policy? Yes?
A Yes.
Q And it's the same report, minus the compelled statements, that go to the district attorney's office, correct?
A Correct.
Q Have you ever had an police officer in an officer-involved shooting investigation refuse to give a compelled statement?
A No.

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Q Do you know if any police officer in any of the officer-involved shootings that you've conducted has ever been prosecuted?
A None in my cases.
Q Have you ever heard of any case where an officer involved in a shooting while on duty has been prosecuted for that shooting?
A No cases that I'm aware of since I've been at the force investigation division.
Q Are investigators from the district attorney's office present during any part of the investigation that you conduct?
A Yes.
Q What portions?
A They are present for citizen interviews, if they make it to the scene on time.
Q They have a -- some sort of hotline that you call.
MR. BRENTE: Well, that she calls?
BY MR. CASILLAS:
Q That the department calls --
A It's my --
Q -- to notify the D.A.'s office.
A It's my understanding they are on call the same way we are and they actually get notified when

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there's an officer-involved shooting.
Q Are they present during the walkthrough, if they are there?
A Not during the walkthrough of the involved officers, but generally one of the lieutenants at scene or the captain or the commander will take them on a walkthrough of the scene after.
Q And over the years that you've been with the FID, how many walkthroughs of officer-involved shootings have you participated in?
A Well, some of the incidents, of course, include multiple officers, so are we counting each incident as one or we talking about if there's an incident where there's 15 officers, is that going to count as 15?
Q I'm talking about cases. Let's say how many cases? You're right. In this case, for example, there were two officers that discharged a firearm. There were two walkthroughs, correct?
A Correct.
Q Okay. And so in your career there with FID, how many walkthroughs have you been present at?
MR. BRENTE: So when he was asking about --
THE WITNESS: For cases?
MR. CASILLAS: Yes.

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MR. BRENTE: Based on the number of cases, not the number of individuals.
THE WITNESS: It's probably real similar to the amount of cases that I've been involved in. I can't remember the number I've given. Was it 20 or 30, I believe?
BY MR. CASILLAS:
Q 20 or 30, something like that.
A Of course there's some occasions where you won't -- depending on your job function, I'll be able to attend the percipient officers' walkthroughs but not the involved officers, so it just kind of depends what my job duty is.
Q And you, yourself, how many shooting officers have you walked through a shooting?
A Again, it's cases and not individual officers.
Q Now I'm talking about individual officers.
A It's so hard to guess a number, but --
MR. BRENTE: So I can't remember if counsel gave you this instruction at the beginning or not, but you're not supposed to guess. So if you're entitled -- if you can give him an estimate, then he's absolutely entitled to it. If all you can do is guess, then he's not entitled to it, and I don't

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think he wants that information either.
THE WITNESS: Yeah, I'm not comfortable guessing.
BY MR. CASILLAS:
Q I don't want you to guess. Is it safe to say to the extent that -- I think you said maybe 10 to 20 of the cases you've been the lead.
A Approximately.
Q Okay. Approximately. I'm assuming that in those 10 to 20 officer-involved shootings there was at least one officer to walkthrough, right?
A Well, they're not all officer-involved shootings where I was a lead. I handled several different types of cases as a lead.
Q Then let me just refine my question.
How many officer-involved shootings with hits have you been the lead on?
A It will take me a minute to think about it.
Q Take all the time in the world.
A I believe I've handled five, give or take.
Q And given those five, at least five individuals were walked through the shooting, right?
A At least five, yes.
Q For walkthroughs, do you yourself -- what's the purpose of a walkthrough as you understand it? I

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mean, you went to homicide school and I'm sure the focus was officer-involved homicides. Yes?

A Yes.

Q Okay. And is that where you first learned that you would be as part of your investigation conducting a walkthrough?

A Well, I'm sorry. Can you repeat the question you asked me about the homicide school? You said the focus was officer-involved homicide?

Q Yes.

A That wasn't the focus. It was overall on all type of homicide investigations, so I misanswered that one.

Q Ultimately, did you learn that as part of the officer-involved shooting investigation that you would be participating in that you would have to conduct a walkthrough?

A Yes.

Q And were you told what the purpose of a walkthrough is?

A Yes.

Q Okay. What did you learn the purpose of a walkthrough is?

A The purpose of the walkthrough, we do it for various reasons. It is -- officers are compelled to

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participate in the walkthrough. It's an extension of their interview. It is help us to locate any potential evidence, as well as to refresh the officer's memory to the location prior to being interviewed. It could also assist us in locating any possible witnesses in the area.

Q So the officers are told they don't to have participate in the walkthrough, correct?

A No, they have to. They're compelled. We order them to participate.

Q Have you ever photographed any portion of a walkthrough?

A No, sir.

Q Why not?

A We do not photograph and we do not take notes during the walkthroughs.

Q Why not?

A It's part of their compelled statement, and being that it's not recorded, I was always instructed by my superiors that we do not take notes and we do not videotape.

Q Or photograph?

A Or photograph.

Q Are you aware -- and only because I've worked on cases involving LAPD shootings where there

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was photographs of walkthroughs and -- and do you know if there's been a change in that policy or practice?

MR. BRENTE: I'm just going to object. I know you're not testifying. I think I know what you're thinking about, but you're wrong. It's not the walkthroughs. So I don't want there to be a record created and you're not under oath and you're not testifying that you have you photos of a walkthrough, so I just want the witness to know don't assume that counsel is correct.

You can answer.

THE WITNESS: I've never seen it. From day one I was advised you don't take notes.

BY MR. CASILLAS:

Q When the officers give their statement, do you take notes?

MR. BRENTE: Are you talking about during the interview?

MR. CASILLAS: Correct.

THE WITNESS: During the interview, yes.

BY MR. CASILLAS:

Q Okay. And obviously the interviews are recorded, right?

A Correct.

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Q How is that different than the walkthrough?

A Because it's recorded and it's being transcribed.

Q That's my point. I mean, you can -- you do the same. You can videotape it, for example, couldn't you?

MR. BRENTE: Well, couldn't she? She doesn't make policies for the LAPD.

MR. CASILLAS: I'm just asking her the difference.

MR. BRENTE: She doesn't make those decisions she's testified to, I think.

BY MR. CASILLAS:

Q Are there specific roles regarding the sequestering of officers after a shooting?

A Sequestering of officers?

Q In other words, they're segregated away.

A If it's determined by a supervisor at scene, usually the incident commander, that officers are substantially involved in the incident, they are separated and they're monitored.

Q And do you know how that's done? Are they put in a patrol car? Are they set aside? Are they somehow placed such that they can't communicate with each other?

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A Well, in my experience it's done several different ways. Sometimes they'll have them at the scene separated, monitored by a supervisor. Other times they will place them in a police car. It just depends. Each scenario is different.

Q I understand that every use-of-force case is assigned a particular number or file number, case number; is that true?

A Yes, it is, sir.

Q And are you familiar with -- and I'm assuming from the time that you get a callout for an officer-involved shooting, you begin to log your activities?

A Yes, sir.

Q And do you keep a physical log?

A Yes.

Q And is that log handwritten or is it computerized or both?

A Sometimes they start off handwritten and then you ultimately ended up putting everything into a chrono, which is typed and it's more legible because a lot of notes at scene are scribbled.

Q I get it. And that chronology goes into the OIS file?

A We generally keep it in our -- in our case

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book or a lot of investigators will keep them on their desktop, which I do at work.

Q Physically as certain items related to the case are collected, is there a physical way to kind of safeguard all of those items?

MR. BRENTE: So I'm going to object. She doesn't collect evidence. There's other people in the department that do that.

MR. CASILLAS: Objection noted.

BY MR. CASILLAS:

Q Is the evidence that's collected as part of the case kept together in one place?

MR. BRENTE: You can answer if you know.

THE WITNESS: I'm not sure.

BY MR. CASILLAS:

Q What about the portion of your file, is there a physical file that you keep? And when I say you, I'm talking about the FID division.

A Are you asking if I keep a casebook?

Q What is a casebook?

A I do keep a casebook that contains all the documents that are relevant to the case.

Q Okay. And what is that casebook?

A It's pretty much a book like this.

Q A binder?

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A A binder with different dividers where you'll have your crime reports, all of your lab reports that come through and you get the notes from different detectives that responded to the scene --

Q Right.

A -- arrest reports. Any reports generated that are related to the investigation will go into the casebook.

Q And when the report is finalized, is that casebook archived somehow, stored away?

A Eventually it is.

Q And are all your notes and the notes of the other participants in the report kept in that file, that archived casebook?

A Usually, yes, and if they're not if the book, they're definitely available.

Q Is the PowerPoint that you prepare for the board put away from the casebook?

MR. BRENTE: You mean the use-of-force review board?

MR. CASILLAS: Yes.

THE WITNESS: No, sir.

BY MR. CASILLAS:

Q What happens to that PowerPoint?

A We keep the PowerPoints. There are

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electronic versions of the PowerPoints at force investigation division.

Q What is typically kept -- strike that.

Ultimately in conducting the investigation -- and I might have asked this. I'll try to follow my outline here. Maybe we'll get through this a little faster.

But the investigation into an officer-involved shooting, is there an ultimate goal in the work that you do as the lead investigator?

A To prepare a thorough and complete report to present to the use-of-force review board.

Q Whether or not the police officer is prosecuted -- and I say this respectfully -- you really don't care, correct?

MR. BRENTE: So she's not going to answer that because it's argumentative as phrased. I'm not saying you mean it way, but if you rephrase your question, she'll certainly answer it, but when it appears in black and white like that, she won't answer that.

BY MR. CASILLAS:

Q You understand that the work that you do will also be the basis in part for a district attorney evaluation of the homicide? Yes?

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A Yes.
Q And is it a factor for you whether or not the district attorney decides to prosecute the officer involved in the shooting that you investigate?
MR. BRENTE: Objection; vague and ambiguous is it a factor to you.
But you can answer if you understand.
THE WITNESS: Yeah, I don't understand.
BY MR. CASILLAS:
Q Do you care whether or not --
MR. BRENTE: That's the same question.
MR. CASILLAS: I'm trying to put it in a nicer way.
BY MR. CASILLAS:
Q The gist of my question is this: Does it really matter to you one way or the other?
A It's not a factor. It does not affect the way I conduct my investigation.
Q Now, in this particular case there are two officers and there's a group of them here.
Had you met any of those officers before?
A No, sir.
Q Had you worked with any of the supervisors that are here?

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A No, sir.
Q Have you ever worked in any of the division -- or the division where the shooting took place?
A No, sir.
Q We spoke earlier about the work that you did. I understand that you prepared -- you authored a report related to the incident. We previously marked it as Exhibit No. 1. I don't have copies for everyone, but it appears to be the confidential report, which begins on page 326.
MR. BRENTE: I think you're referring to the Bates-labeled number that we marked it as part of the discovery we produced in this case.
MR. CASILLAS: That is correct.
BY MR. CASILLAS:
Q And it starts on 326 and goes through 350. I'm going to show you the copy and certainly share it.
Is that the report that you prepared?
MR. BRENTE: We agreed that Exhibit 1 will be under seal.
MR. CASILLAS: And there's going to be a separate binder for sealed, confidential exhibits, although for today I think all of them will be.

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MR. BRENTE: Thank you.
THE WITNESS: It certainly appears to be the report, sir.
BY MR. CASILLAS:
Q And start to finish you authored that?
A Yes, sir.
Q And maybe to refresh your recollection there, who was the supervisors there that approved that or who were they?
A My lieutenant II was James Antenucci.
MR. BRENTE: Spell that for her.
THE WITNESS: James, common spelling, J-a-m-e-s. Antenucci is A-n-t-e-n-u-c-c-i. And the commanding officer was Commander Robert A. Lopez.
Would you like it back, sir?
BY MR. CASILLAS:
Q In a second, yes. You were present at the questioning of the involved officers with respect to the shooting, and I'm talking specifically about Officer Urrutia and Officer Ramirez. Yes?
MR. BRENTE: You're referring to as part of the investigation?
MR. CASILLAS: Yes.
THE WITNESS: The interviews?
BY MR. CASILLAS:

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Q Yes.
A Yes, sir.
Q And I have what I believe are the audio of them, and I'm going to attach as an exhibit to your deposition the recorded statements and I want to make sure it's you.
A Okay.
Q Okay. And so what I will do first is play Mr. Ramirez's audio, ask you to listen to it. The protocol typically is to identify yourself and other witnesses. I'll ask you if it's you and we'll do the same for Mr. Urrutia. I'm used to saying it in Spanish. I can't say it in English.
MR. BRENTE: But officer is a regular English word and you don't even know how to pronounce that.
MR. CASILLAS: Officer Urrutia.
MR. BRENTE: Logistically, so this recording, which I think you said the audio recording of the interview of Officer Ramirez, you're going to mark that as Exhibit 2?
(Plaintiffs' Exhibit 2 was marked.)
MR. CASILLAS: Correct.
MR. BRENTE: Also under seal.
MR. CASILLAS: She need not -- I'm going to.

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MR. BRENTE: I just need to confirm that the reporter need not transcribe the audio portion of the Exhibit 2 that you are playing for the witness.
MR. CASILLAS: Correct.
(Whereupon the audio recording was played.)
MR. CASILLAS: I'm going to stop the audio and go back to some questions.
BY MR. CASILLAS:
Q First of all, do you recognize that woman who speaks who appears to be conducting the interview of Mr. Ramirez?
A Yes, sir.
Q And is that you?
A It is.
Q And in addition to the interview that was conducted that we have as Exhibit No. 1, did you do any follow-up interviews of Mr. Ramirez?
A No, I believe we just did one interview with Mr. Ramirez.
MR. BRENTE: Officer Ramirez.
THE WITNESS: Officer Ramirez. I apologize.
MR. CASILLAS: Actually, the local rules require that we use Mr. and Ms.
MR. BRENTE: That's actually not true because in the Dominguez trial that you were

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graciously congratulating me on, not only were all the officers referred to as officer or sergeant or commander, the witness -- the verdict form also contained their title as officer, so I don't think Judge Gee, G-e-e, was violating the local rules.
MR. CASILLAS: I don't know that Judge Gee was aware of the local rules, but --
MR. BRENTE: I'll make sure to let her know that.
MR. CASILLAS: I take great pride in knowing the rules.
MR. BRENTE: I don't think there's anything in the rules that prevent people who are medical doctors from being referred to as doctor on the record or officer as officer, sergeant as sergeant. I don't -- I'm not aware of the rule, but if you can cite it to me, I would be interested in looking at it at some point.
MR. CASILLAS: And for the record, that was Exhibit No. 2. I'll provide you a copy after the deposition.
Exhibit No. 3 is going to be a recording again of Mr. Urrutia. I'm going to play that for you and, again, just walk you through a little bit of it so we can confirm.

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(Plaintiffs' Exhibit 3 was marked.)
(Whereupon the audio was played.)
BY MR. CASILLAS:
Q Again, referring now to Exhibit No. 3 --
MR. BRENTE: Which is also going to be attached under seal.
MR. CASILLAS: Correct.
BY MR. CASILLAS:
Q Was that -- the woman there politely speaking on the record, was that you?
A Yes, it was.
Q And with respect to Officer Urrutia, did you conduct just one interview?
A I believe so, yes.
Q And in conducting your interview of police officers, what is the -- first of all, do you have guidelines, procedures, protocols, rules, anything that guides you in either what you ask or how you ask it?
A There's nothing official, but there are some guidelines we follow. There's a list of questions that they recommend that we can ask on different type of incidents or events as a reminder.
Q Can we call them guidelines?
A You can call them guidelines. It's nothing

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that's official or that's been published, but it's available to FID personnel.
Q And do those guidelines have a title?
A I don't know if there's a title to that. I'm not sure.
Q And obviously you're familiar with them.
A Yes.
Q What do they say in terms of guidance or how to conduct such interviews?
A It doesn't necessarily give you guidance to conduct interviews, but there's questions frequently asked for different types of incidents.
Q And is one the categories of incidents officer-involved shootings?
A Yes, sir.
Q Do you yourself have a custom and practice that you follow when conducting these interviews, again, interview of police officers involved in an officer-involved shootings, as to how you proceed?
A Different people have different styles and I have a style of my own, yes.
Q And what is that style?
A I generally -- and, of course, it depends on the person that you're interviewing -- encourage the officer to tell the story from beginning to end in

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narrative form, allow them to do so, and once they're done, we'll ask follow-up questions.

Q And obviously you've conducted interviews of suspects in criminal cases, correct?

A Correct.

Q Do you also follow that style when interviewing them?

A Again, every situation is different, but I found that that style does work.

Q And do you treat the officers -- and, again, in a homicide investigation, obviously it's a compelled statement. The fifth amendment applies and it can't be used against them, but are you cautious about conducting any part of that interview?

MR. BRENTE: Objection; vague and ambiguous, compound, overly broad.

You can answer if you understand.

THE WITNESS: Yeah, I don't understand, sir.

BY MR. CASILLAS:

Q Well, you know, when I depose people, for example, if there's something there that I know they're lying about, I hide it from them sometimes, sometimes I confront them with it and because it's -- it's my style, my strategy, a technique that I use.

Do you have -- and the strategies are

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intended to get to the truth of what really happened. If I have something that I know they're hiding, I'll ask them a series of questions about it and then maybe spring it on them afterwards and ask them if they can explain it. All right.

Do you have strategies or techniques like that or do you just let them tell their story?

MR. BRENTE: I'm going to object as vague, ambiguous, overly broad, compound. I think counsel is trying to give an example, but I think it's more testifying than giving an example. Maybe you can ask a more narrowly tailored question without the -- I know you were trying to give an example, but so that the record is cleaner and there's not all that lead-in that's part of the question.

BY MR. CASILLAS:

Q Do you look for -- start it this way. Do you assume the police officer is going to be to tell you the truth?

A I don't assume anything when I go into an interview.

Q I appreciate that. But do you assume that they are going to tell you the truth?

MR. BRENTE: I'm going to object asked and answered.

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But you can answer a second time.

THE WITNESS: I don't assume anything when I go into any interview.

BY MR. CASILLAS:

Q Have you ever had a police officer lie to you?

MR. BRENTE: Okay. So I'm going to instruct her not to answer because her interviews and investigations are confidential and privileged and that's a question that's not likely to lead to discovery of relevant or admissible evidence, and I think it's argumentative and harassing, so I'm not going to allow her to answer that.

BY MR. CASILLAS:

Q Let's deal with some of that.

Have you ever conducted an interview of a police officer and learned that a police officer was not truthful in any part of his or her testimony, and then upon learning that, come back to inquire about that fact?

MR. BRENTE: So I'm going to object it assumes facts not in evidence. It's not testimony. It's an interview.

MR. CASILLAS: Noted.

THE WITNESS: We refer to that as a

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conflict. There have been circumstances where statements will be different, different interpretations or explanation of events and that would be something that we would go back and re-interview on.

BY MR. CASILLAS:

Q Would that include inconsistencies between two officers on the scene with respect to an important fact or detail?

A It depends on the inconsistencies. It is very common to have different perceptions of what happened.

Q And in the case where you have that conflict or that inconsistency, do you have a practice in terms of following up with the officers involved?

MR. BRENTE: I'll object vague and ambiguous following up.

But you can answer if you understand.

THE WITNESS: Again, it depends on the circumstances. It's certainly something that we document in our report if there's inconsistencies, so we put it out there, but we've got to be very careful to not ask leading questions.

BY MR. CASILLAS:

Q What is a leading question?

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A A leading question is almost guiding the officer in a certain direction and that's part of the reason why I have the officer speak in narrative at the beginning of the interview and go back and ask them follow-up questions.

Q Now, before the officers are allowed to undergo their interrogation -- excuse me -- questioning and, in fact, probably even before they go through a walkthrough, they're permitted to talk to their attorneys. Yes?

A Yes, that's correct.

Q And I understand that it's a common practice where you have two officers to have them have the same attorney.

Has that been your experience?

MR. BRENTE: Well, I'm just going to object because that assumes she plays any role in that decision.

But you can answer.

THE WITNESS: They generally have the same attorney.

BY MR. CASILLAS:

Q Does that pose any problems for you?

A No, sir.

Q Do you -- Mr. Winslow, do you know

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Mr. Winslow? Good guy. Do you know him?

MR. BRENTE: I missed the editorial part about good guy. I don't know this guy. I never met him in my life.

MR. CASILLAS: He's an attorney in this case.

MR. BRENTE: Oh, you know him?

MR. CASILLAS: Yeah.

MR. BRENTE: Oh, okay. I don't know him, so I don't know if he's a good guy or a bad guy. I don't know anything about him.

BY MR. CASILLAS:

Q Have you met him?

A Just during -- just during this incident, but I don't know him personally.

Q You've never come across him before in any other cases, shootings particularly?

A I believe this was the first and only case I've worked with him.

Q He's a good guy. Take my word for it.

So leading questions, you can't guide them. In preparing for today's deposition -- by the way, did you listen to the audiotapes in this case?

A No, sir.

Q Did you review anything in preparing for

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today's deposition?

A I did.

Q What did you do?

A I reviewed my summary, as well as the officers' transcripts, Officer Ramirez and Officer -- excuse me. I might say his last name incorrectly. Urrutia, I reviewed his transcript as well.

Q And when you did that, were they present?

MR. BRENTE: I'm going to object. So what she reviewed she, I think, told you the manner in which she reviewed is in my view attorney work product, invades my work product, my strategy, so she's not going to tell you who was present in any meeting she had with any of her attorneys.

MR. CASILLAS: You can't do that because the only way I can determine if there is a -- whether there is a foundation to assert attorney-client privilege or any other privilege is whether anybody else was there.

MR. BRENTE: That's actually not true. But to the extent that that is the purpose of your question, I can represent that there was no one present who was not an employee of the City of Los Angeles. I represent the City of Los Angeles, the Los Angeles Police Department, as well as the

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involved detectives, the involved officers, as did Ms. Lee, so all of the employees of the City of Los Angeles are covered by the attorney-client privilege when they're meeting with the city attorney.

So whoever was there or not there, I would represent is an officer of the court and swear to a declaration there was no one present that was not an employee with the City of Los Angeles.

BY MR. CASILLAS:

Q When you reviewed in preparing for today, was Mr. Urrutia there?

MR. BRENTE: I'm going to object and instruct you not to answer. That goes to the attorney work product. It goes to my strategy in preparing the case and preparing my witnesses, so she's not going to tell you that.

BY MR. CASILLAS:

Q How about Mr. Ramirez?

MR. BRENTE: Same instruction.

BY MR. CASILLAS:

Q In preparing, you reviewed your report, your summary, as well as the -- and did you read fully the transcripts of the statements of the two shooting officers?

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A Yes, I did.
Q And was that the first time that you read them after submitting the report?
A Yes.
MR. BRENTE: I'll object as vague and ambiguous.
Do you understand the question?
THE WITNESS: I apologize. I do. Yes.
(Whereupon this portion of the transcript is marked confidential.)
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BY MR. CASILLAS:
Q I've had the experience of having officers in shooting scenarios not put the car in park. It surprised me then and it surprises me now and I get it. It's fast moving with all of the things that happen in a shooting.
In your experience, have you come across any shootings that you've investigated or heard of during your career involving that fact, officers exiting their patrol car and not putting the car in park?
A Yes.
Q On how many occasions?
A I -- while working criminal apprehension team, my first case was a similar case where the officers did not place their vehicle into park prior to an officer-involved shooting.
I assisted in another investigation where similar circumstances, just prior to the officer-involved shooting, the vehicle was not placed in park, and then I had a personal experience where one of my partners failed to put a vehicle in park.
Q Did it surprise you that happened?
A It did. And I've heard of other occasions, but those are three where I was personally involved.
Q How many others?

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A I'm not sure how many others. I couldn't even give you a guess, sir.
Q I have what I believe to be photographs taken at the location apparently the morning after -- the morning after, I guess, or later on that day maybe.
I understand that it is a common practice to use paper plates to designate the position of officers or subjects during the walkthrough.
A That's correct.
Q And I understand that you sometimes use that for the sake -- for the purpose of just documenting a position of either a suspect, a subject, or an officer, maybe an eyewitness, correct?
A Correct.
Q And I understand in this case that that was done.
Do you recall that?
MR. BRENTE: That's a yes or a no.
THE WITNESS: Yes.
BY MR. CASILLAS:
Q What I'm going to do -- and I would love to have shown the photograph to you in its kind of blown up state in front of us on the monitor, but what I will do is identify -- first of all, did you review

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the photographs taken on scene in preparing for today's deposition?
A I looked at a few of them but not all of the photographs. The ones you're referring to right now, I did not look at.
Q Which ones did you look at, by the way?
A I reviewed some coroner photographs.
MR. CASILLAS: The first photograph we'll identify as the next in order and that's going to be Exhibit No. 4.
(Plaintiffs' Exhibit 4 was marked.)
MR. BRENTE: So we are creating a record, I think your intent is to show her something on a computer screen.
MR. CASILLAS: Yes.
MR. BRENTE: Because there are no photographs here in the room and at some point print this photograph that you're going to show her on a laptop computer and have it marked and attached to the deposition Exhibit 4.
MR. CASILLAS: Correct.
MR. BRENTE: So based on your questioning because I cannot see the photograph because obviously your laptop screen is turned towards you, but based on your questioning, I assume it's a photograph with

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some plates, and if it is, that will be part of the walkthrough, which she indicates was compelled, so that photograph and any questions about that photograph would have to be under seal.

MR. CASILLAS: I'll object to that, but I'll move on and I will ask the court reporter to put it under seal.

(Plaintiffs' Exhibit 4 was marked.)

MR. BRENTE: Okay. Thank you.

BY MR. CASILLAS:

Q Exhibit No. 4 and I have --

MR. BRENTE: Now we're back on questions under seal.

MR. CASILLAS: Under seal.

(Whereupon this portion of the transcript is marked confidential.)

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BY MR. CASILLAS:

Q It occurred to me, just a series of questions about your report, and, again, we've identified that previously as Exhibit No. 1.

As I understand it, you work for the force investigation division and part of your work includes conducting investigations and officer-involved shootings. That's what you do, correct?

A Correct.

Q And part of the preparation of the report includes the documenting of your findings at or near the time that you find it. For example, I guess when you start your report, you put everything together, but eventually there's other information that you get and you add to your report; is that accurate?

MR. BRENTE: I'm going to object that misstates her testimony. She makes no findings at all. She makes no findings. There are none.

BY MR. CASILLAS:

Q I get that you don't make findings and my -- you said the word findings is not in the term of a conclusion, but evidence that is discovered.

For example, I know that the coroner's report doesn't come out for about four months, correct?

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A If we're lucky.

Q If we're lucky, right?

A Yes.

Q So eventually you get the toxicology report from the coroner's office, sometime after the shooting, months usually, correct?

A Correct.

Q And when you get that portion of the evidence, you then note it and you add it to your report; is that accurate?

A Correct.

Q Okay. So my point was, that as you gather information, it is then, at the time or near the time you gather it, added to your report, correct?

A For --

MR. BRENTE: I'll object as vague and overly broad.

You can answer if you understand.

THE WITNESS: For the most part.

BY MR. CASILLAS:

Q Now, are there any conclusions that you make at all?

A Conclusions?

Q Yeah. In your report, the conclusion, he was hit six times. That's a conclusion, isn't it?

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A Yeah. If the evidence supports it, yes.

Q Right. Right. And you go through the evidence and you look for information to make conclusions about the evidence itself, correct?

MR. BRENTE: I'm going to object as vague, ambiguous, overly broad.

BY MR. CASILLAS:

Q Right?

MR. BRENTE: If you understand it, you can answer it.

THE WITNESS: I don't. I'm sorry.

BY MR. CASILLAS:

Q My point is, you make conclusions about facts that you gather.

MR. BRENTE: Same objection.

MR. CASILLAS: Let me rephrase the question.

BY MR. CASILLAS:

Q After gathering facts and evidence as part of your investigation, do you make any conclusions about them?

MR. BRENTE: Same objection, vague and ambiguous, overly broad.

THE WITNESS: Yeah, I don't really understand.

BY MR. CASILLAS:

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Q The example I cited earlier, you attend -- and by the way, did you attend the coroner's autopsy?
A I did not.
Q Any particular reason you didn't?
A I was busy.
Q Okay. And eventually you got the coroner's report, right?
A I did.
Q And you identified from that report and from the photographs possibly the number of times that Mr. Rivera was struck by bullets, right?
MR. BRENTE: I'm going to object. I don't think she makes that determination.
But you can answer.
THE WITNESS: I went off the coroner's report.
BY MR. CASILLAS:
Q Right. And based on that information, you made -- you added that information here in your report, correct?
A Yes.
Q Okay. Now, certain facts in your report reflected your opinion, correct?
A If you can give me an example, I would be able to answer that. I can't think of any right now.

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MR. BRENTE: Now we are going to have to go under seal because now you're going to ask her something specific about her report.
MR. CASILLAS: We'll go under seal.
(Whereupon this portion of the transcript is marked confidential.)
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STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

I, GINA ANNE GEORGE, do hereby certify:
That I am a duly qualified Certified Shorthand Reporter, in and for the State of California, holder of certificate number 11260, which is in full force and effect and that I am authorized to administer oaths and affirmations;
That the foregoing deposition testimony of the herein named witness was taken before me at the time and place herein set forth;
That prior to being examined, the witness named in the foregoing deposition, was duly sworn or affirmed by me, to testify the truth, the whole truth, and nothing but the truth;
That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, and were thereafter transcribed under my direction and supervision;
That the foregoing pages contain a full, true and accurate record of the portion of the proceedings and testimony which was not designated as confidential to the best of my skill and ability;
That prior to the completion of the foregoing deposition, review of the transcript was requested.

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I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have subscribed my name this ____ day of _____, ____.

_____
GINA ANNE GEORGE, CSR No. 11260

PENALTY OF PERJURY CERTIFICATE

I hereby declare I am the witness in the above captioned matter; that I have read the foregoing transcript or that it has been read to me, and I know the contents thereof; that the transcript is true to my knowledge, except as to those matters which are herein stated upon my information or belief, and as to those matters, I believe them to be true; that I find the transcript to be a true and accurate transcription of the portion of my testimony which was not designated as confidential, with the following corrections, if any:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the ____ day of _____ 20___,

at _____, _____.
(City) (State)

_____

BRANDY ARZATE

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